

CALIFORNIA ENERGY COMMISSION

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**STATE OF CALIFORNIA
ENERGY RESOURCES CONSERVATION
AND DEVELOPMENT COMMISSION**

Implementation of Restructuring Legislation (Public Resources Code Sections 381, 383.5 and 445 [AB 1890, SB 90]): Renewables)))))	Docket No. 98-REN-New New Renewable Resources Account Notice of Business Meeting RE: Proposed Guidebook Revisions
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**NOTICE OF PROPOSED GUIDELINE CHANGES
RENEWABLE ENERGY PROGRAM**

The Energy Commission's Business Meeting will be held:

WEDNESDAY, November 19, 2003
10 a.m.
CALIFORNIA ENERGY COMMISSION
1516 Ninth Street
Hearing Room A
Sacramento, California
(Wheelchair Accessible)

At a regularly scheduled Business Meeting on November 19, 2003, the Energy Commission will consider a recommendation by the Renewables Committee (Committee) to make substantive changes to the *Guidebook for the Renewable Energy Program, Volumes 2A and 2B – New Renewable Resources Account* (publication numbers P500-01-014V2A and P500-01-014V2B, respectively).

In summary, the Committee recommends:

1. Allowing on-line projects that are unable to meet minimum generation requirements to avoid an undergeneration penalty by either reducing their funding awards or adding generating capacity.
2. Removing the limits on the amount of funding on-line projects can receive in each of the first three years of operation.
3. Extending until July 2, 2004 the 50 percent reduction in funding awards for winning bidders in Notice of Auction 500-00-504 (October 2000) and Notice of Auction 6-01-3 (June 2001).

A discussion of the rationale for the proposed guidebook changes, along with an underline/strikeout version of the relevant sections of the guidebook, are attached.

Public Participation

The Energy Commission's Public Adviser, Margret J. Kim, provides the public assistance in participating in Energy Commission activities. If you would like information on how to participate in the business meeting, please contact the Public Adviser's Office by phone at (916) 654-4489 or toll free at (800) 822-6228, by FAX at (916) 654-4493, or by e-mail at [pao@energy.state.ca.us].

If you have a disability and need assistance to participate in the hearing, please contact Lourdes Quiroz at (916) 654-5416 or by e-mail at [lquiroz@energy.state.ca.us] at least five days before the business meeting.

Members of the public who have technical questions regarding this notice may contact Suzanne Korosec, New Renewables Program Lead, by phone at (916) 654-4516 or by e-mail at [skorosec@energy.state.ca.us]. News media should direct inquiries to Claudia Chandler, Assistant Director, at (916) 654-4989 or by e-mail at [energia@energy.ca.gov].

Date: November 7, 2003

STATE OF CALIFORNIA ENERGY RESOURCES CONSERVATION AND DEVELOPMENT COMMISSION

JOHN L. GEESMAN
Commissioner and Presiding Member
Renewables Committee

JAMES D. BOYD
Commissioner and Associate Member
Renewables Committee

Date Mailed: November 7, 2003
Mass Mail List: Master63new.xls

Attachment

Description of Proposed Guidebook Changes **Renewable Energy Program** **New Renewable Resources Account**

Background

Since the Renewable Energy Program began operating in January 1998, the Energy Commission has held three auctions to award financial incentives to new renewable electricity generating facilities. Project developers were required to estimate the amount of generation that would be produced by their project over the first five years of operation. For winning bidders, the estimated generation was then multiplied by the incentive requested by the bidder to determine the bidder's total conditional funding award.

To encourage bidders to estimate their generation as accurately as possible, the Program guidelines contain provisions to address over- or underestimation of generation. To discourage underestimation, projects can receive a maximum of 25 percent of their total funding award in each of the first three years of operation. In addition, projects can only receive incentive payments for the total amount of generation estimated in their bid.

To discourage overestimation, projects are required to generate an average of 85 percent of their estimated generation over the first three years of operation. If a project does not meet the 85 percent threshold, the current guidelines state that the project's award will be reduced to reflect the actual annual generation over the first three years of operation, and the cents per kilowatthour incentive level will also be reduced by 25 percent for the remaining two years of payment.

In the October 2000 and June 2001 auctions, projects were required to be on-line by July 1, 2001 and July 1, 2002, respectively, to be able to receive their full funding awards. Projects that did not come on-line by the deadline were subject to a series of penalties, as shown below:

PENALTIES FOR WINNING PROJECTS IN NOTICES OF AUCTION 500-00-504 AND 6-01-3	
Project On-line Date	Percentage of Award
Prior to or on June 1, 2002	110 Percent
June 2 to July 1, 2002	100 Percent
July 2 to August 1, 2002	90 Percent
August 2 to September 1, 2002	80 Percent
September 2 to December 31, 2002	70 Percent
January 1, 2003 to April 1, 2003	60 Percent
April 2, 2003 to July 1, 2003	50 Percent
July 2, 2003 and beyond	Award may be further reduced or terminated.

In addition, winning bidders in the October 2000 and June 2001 auctions may not receive any payments for generation after July 2, 2008.

Rationale for Proposed Guidebook Changes

The Renewables Committee is recommending that the Program guidelines for the New Renewable Resources Account be changed to allow projects that are generating less than is specified in their approved funding awards to avoid penalties by either (1) notifying the Energy Commission of the shortfall in generation and requesting a reduced funding award based on the expected generation over the remaining period of the funding award, or (2) proposing project modifications to increase the project's generating capacity to the level specified in the funding award.

If the expected generation for the modified project equals or exceeds the level specified in the project's funding award, the total amount of the funding award will remain unchanged.

It is the Committee's opinion that increasing the size of a project and the expected amount of generation produced should be encouraged, since the additional renewable generation will occur with no additional encumbrance of public goods charge funds. In addition, allowing project changes may also encourage the use of more efficient equipment. The Commission will, however, have the discretion to deny changes that reduce the efficiency of a project

The Committee is also recommending that the 50 percent penalty phase for winning bidders in the October 2000 and June 2001 auctions be extended to July 1, 2004. The overall uncertainty in California's electricity market over the past several years has made it difficult for many developers to obtain financing to proceed with construction of their renewable generating projects. The Committee intends to provide some measure of certainty regarding the level of funding for these projects to assist projects in getting the necessary financing to allow the projects to move forward.

Finally, the Committee is recommending that projects be allowed to receive more than 25 percent of their funding award in each of the first three years of operation. This recommendation is intended to allow winning projects that will receive less than five years of payments because of their on-line dates to receive their entire funding awards.

The proposed guidebook changes follow, shown in underline/strikeout format.

Guidebook for the Renewable Energy Program Volume 2A, New Renewable Resources Account (Publication No. 500-01-014V2A)

Page 10 under “What Should Be In Your Bid:”

The Estimated Generation Over Five Payment Years

Bidders must, to the best of their ability, accurately estimate the level of generation that their proposed project will be able to provide over the five years that incentive payments will be received. This estimate will be used in an auction to determine the point at which auction funds are expected to be fully allocated and consideration of bids will stop. Estimation of the expected generation also has implications after the auction has been held. Underestimation of expected generation could lead to insufficient funds in the New Renewable Resources Account to make the payments. On the other hand, overestimation of expected generation will tie up funds unnecessarily, and is potentially anti-competitive.

Underestimation of generation will be discouraged by limiting incentive payments to no more than the amount of generation proposed in the bid for the project (over five years). That is, a project may end up generating more than originally estimated in their bid, but they will only get incentive payments for the amount reflected in their bid. ~~In addition, to avoid front-loading payments at the beginning of the payment period, payments in the first 3 applicable years will be limited to 25 percent of the project's total award in any 12-month period.~~

Overestimates of generation will be discouraged through reasonableness checks on generation estimates, by limiting incentive payments to five years of actual generation, and by potential penalties for clear overestimates.¹ If the actual generation from a winning project averages less than 85 percent of the estimated generation over the first three years of operation, the cents/kWh incentive payments to the project will be reduced by 25 percent for the remaining two years of payments. In addition, the total project award will be reduced to reflect the observed actual annual generation (as observed over the first three years) and the reduced incentive payments for the last two years. Funds removed from a project award will be held for potential reallocation per the Report.²

A reduction in project incentives and total award due to insufficient generation may be avoided if the winning bidder makes a timely request to reduce the project award and demonstrates to the Energy Commission's satisfaction that the shortfall in generation was unanticipated and caused by circumstances beyond the bidder's reasonable

¹ The Energy Commission will examine the expected capacity factor for each project, compare to capacity factors experienced by similar existing projects, and require projects with clear discrepancies to clarify their information (bids may be deemed inadequate if clarification is not received). Any changes in the capacity of the project subsequent to the auction will be closely examined. If the capacity change is on clearly justified by post-auction considerations, the Energy Commission may terminate the project grant or otherwise penalize the project.

² The Energy Commission's ***Policy Report on AB 1890 Renewables Funding***. (Publication Number P500-97-002).

control. If the request is approved by the Energy Commission, the project award will be reduced to reflect the project's expected generation over the remaining period of the award, but will not be assessed a 25 percent penalty. with sufficient notification and reason, and may be appealed to the Energy Commission. Projects that experience or expect a period where a low generation amount due to unforeseen events may trigger the penalty adjustment should notify the Energy Commission in writing.

In addition, a winning bidder may avoid a reduction in project incentives and total award by proposing project modifications to increase the project's generating capacity. The winning bidder must notify the Energy Commission in writing in advance of making any such modifications and must also demonstrate to the Energy Commission's satisfaction that the shortfall in project generation was unanticipated and caused by circumstances beyond the bidder's reasonable control, and that the modified project remains otherwise eligible for funding. If the Energy Commission determines that the shortfall in generation was unanticipated and beyond the bidder's reasonable control, and the modified project remains otherwise eligible for funding, the project award will be reduced as needed to reflect the modified project's expected generation over the remaining period of the award, but will not be assessed a 25 percent penalty.

Bidders are expected to propose estimated generation amounts that reflect relatively constant annual generation over the five payment years. However, bidders may reflect a pattern of increasing generation over the five years if that pattern is expected for the proposed project. Projects with an increasing pattern of generation over time may inadvertently trigger the over-estimation penalty. In such cases, winning projects will have an equivalent alternative penalty specific to the project included in their Project Award Packages or Funding Awards. Projects are not allowed to reflect a pattern where expected generation is front-loaded and decreases over time. Projects should describe their expected pattern of generation over the five expected payment years in their bid forms. A winning project's generation expectations will be incorporated into their Project Award Package or Funding Award.

Page 18, under "Post-Award Changes in Proposed Project"

Projects are expected to go from award to completion unaltered from their original proposal; that is, projects are expected to be designed and proposed as feasible, permittable, serious projects. The Energy Commission, however, recognizes that some project changes may be required due to permitting requirements or events that are unforeseen by the bidder. The Energy Commission must be notified in advance in writing of any proposed change in a winning project while the incentive program is pending or operational for that project. Changes that have no material bearing upon the purposes or process of the incentive program, or on the amounts of incentives received by the project, will receive a letter of notification that the proposed change will not affect the project's award. For example, a project's name or owner may change (the second owner must meet eligibility criteria) without materially affecting the program.

Changes having a material bearing upon the purposes or process of the incentive program may, upon determination by the Energy Commission, result in penalties, forfeiture of incentive payments, or termination of grant awards to the project. For example, a project that is sold to a non-eligible owner or becomes non-renewable will materially affect the program.

The Energy Commission will determine an appropriate response, ranging from notification that the proposed change will not affect the project's award, to notification that the proposed change does not meet the intent of the program and may trigger adoption of penalties and/or an order terminating the grant award of the project.³

Page 21 under "Coming On-Line:"

Second Auction, NOA 500-00-504:

Projects under the Energy Commission's second auction, NOA 500-00-504, are also expected to come on-line by January 1, 2002. However, the second auction was designed primarily to encourage projects to be developed by the summer of 2001 to help with California's projected shortage of electricity supplies. Toward that end, NOA 500-00-504 specified a system of bonuses and penalties based on a project's on-line date as shown below:

Project On-line Date	Percentage of Award
Prior to or on June 1, 2001	110 Percent
June 2 to July 1, 2001	100 Percent
July 2 to August 1, 2001	90 Percent
August 2 to December 31, 2001	80 Percent
January 1, 2002 and beyond	Award may be terminated or further reduced

As shown in the table, projects coming on-line on or before June 1, 2001 will receive a 10 percent bonus, while projects that have not come on-line by January 1, 2002 may be subject to further award reductions or termination.

Projects under the second auction that are unable to come on-line by January 1, 2002 may also petition for an extension of their funding awards as specified in the *Overall Guidelines for the Renewable Resource Trust Fund*, but are subject to further award reductions and penalties as specified below. While projects under the second auction participated with the understanding that their primary value was in coming on-line quickly, ideally by summer 2001, the Commission recognizes that there have been a number of unforeseen occurrences affecting California's electricity market during the period in which these projects were being developed. Therefore, projects under the second auction that are unable to come on-line by January 1, 2002 as a result of circumstances beyond the developer's control will be subject to the revised schedule of penalties shown below. In addition, no payments will be made to these projects for any generation beyond July 2, 2008.

³ A project cannot be changed prior to coming on-line in a manner that makes it easier to meet an on-line deadline and subsequently changed again after coming on-line to return the project back to its prior status. For example, a wind project cannot be changed so that 15% fewer turbines are to be installed, come on-line with this reduced project, and subsequently be changed to re-associate the turbines in question with the project.

PENALTIES FOR WINNING PROJECTS IN NOTICE OF AUCTION 500-00-504	
Project On-line Date	Percentage of Award
January 1 to September 1, 2002	80 Percent
September 2 to December 31, 2002	70 Percent
January 1, 2003 to April 1, 2003	60 Percent
April 2, 2003 to July 1, 2003 <u>2004</u>	50 Percent
July 2, 2003 <u>2004</u> and beyond	Award may be further reduced or terminated.

Third Auction, NOA 6-01-3:

The Commission's third auction, NOA 6-01-3, was conducted in mid-2001 and was intended to solicit renewable projects that could be on line by summer 2002 (well after the January 1, 2002 on-line date identified in Public Utilities Code section 383.5(c)(2)(B)). Therefore, the Commission has determined that the timing of the auction in itself constitutes circumstances beyond the project developer's control for purposes of extending the funding awards of any projects that are not on-line by January 1, 2002. These funding awards will be automatically extended and subject to the bonuses and penalties shown in the table below. In addition, no payments will be made to these projects for any generation beyond July 2, 2008.

PENALTIES FOR WINNING PROJECTS IN NOTICE OF AUCTION 6-01-3	
Project On-line Date	Percentage of Award
Prior to or on June 1, 2002	110 Percent
June 2 to July 1, 2002	100 Percent
July 2 to August 1, 2002	90 Percent
August 2 to September 1, 2002	80 Percent
September 2 to December 31, 2002	70 Percent
January 1, 2003 to April 1, 2003	60 Percent
April 2, 2003 to July 1, 2003 <u>2004</u>	50 Percent
July 2, 2003 <u>2004</u> and beyond	Award may be further reduced or terminated.

Page 24, under "After A Project Comes On-Line"

If a project consistently generates less than is specified in its funding award, estimated in its bid or current project award package, the project will run the risk of an overestimation penalty.⁴ The Energy Commission will determine, based upon the generation information submitted, whether a project may be at risk for a penalty for overestimation, and notify the project. Projects that are generating less than expected may avoid the overestimation penalty by requesting a reduction in the project's funding award to reflect the lower generation. request a change in their project award package. Such a request must be in writing, submitted to the Energy Commission in a timely

⁴ If the actual generation from a winning project averages less than 85 percent of the estimated generation over the first three years of operation, the cents/kWh incentive payments to the project will be reduced by 25 percent for the remaining two years of payments. In addition, the total project award will be reduced to reflect the observed actual annual generation (as observed over the first three years) and the reduced incentive payments for the last two years. Funds removed from a project award will be held for potential reallocation per the Report

manner, and clearly should describe the following: 1) the project's generation as realized to date and expected over the remaining period of the funding award, 2) the circumstances that resulted in the lower than expected generation, and 3) explain clearly why the shortfall in generation was not unanticipated and beyond the project developer's reasonable control. If the Energy Commission determines that the shortfall in generation was unanticipated and beyond the project developer's reasonable control, the project's funding award will be reduced to reflect the project's expected generation over the remaining period of the funding award, but will not be assessed a 25 percent penalty. accounted for in the original bid for the project and in subsequent milestones during project construction.

In addition, projects may avoid the overestimation penalty by requesting a modification to increase the project's generating capacity. This request must be in writing, submitted to the Energy Commission in a timely manner, and clearly describe the following: 1) the project's generation as realized to date and expected over the remaining period of the funding award, 2) the circumstances that resulted in the lower than expected generation, 3) why the shortfall in generation was unanticipated and beyond the project developer's reasonable control, 4) the proposed project modifications that are intended to increase the project's generating capacity, and 5) the increased generation expected from said modifications. If the Energy Commission determines that the shortfall in generation was unanticipated and beyond the project developer's reasonable control, and the modified project remains otherwise eligible for funding, the funding award will be reduced as needed to reflect the modified project's expected generation over the remaining period of the funding award, but will not be assessed a 25 percent penalty. If the expected generation for the modified project equals or exceeds the level specified in the project's funding award, the total amount of the funding award will remain unchanged. Under no circumstances will the total amount of a project's funding award be increased due to a project's modification.

Guidebook for the Renewable Energy Program Volume 2B, New Renewable Resources Account (Publication No. 500-01-014V2B)

Page 14, under “Post Award Project Changes”

Once the PAP is adopted, the Commission must be notified ***in advance in writing*** of any proposed change in a winning project that may materially affect the purpose or process of the incentive program while the program is pending or operational for that project. These changes must be approved in writing by the Commission staff before the project can proceed. Examples of such changes are: sale of project; change in technology; increase in the amount of fossil-fuel use; increase or decrease in capacity or expected energy generated; changes in contract renegotiations affecting the project's ability to repower (if applicable); change in project location; and schedule changes such that milestone dates differ more than three months from those outlined in the PAP.

The project manager and the Committee will review the proposed changes and determine an appropriate response, ranging from notification that the proposed change will not affect the project's award, to notification that the proposed change does not meet the intent of the program and may trigger adoption of penalties ~~and or~~ an order terminating the grant award of the project.⁵

Page 19, under “After A Project Comes On-Line”

If a project consistently generates less than is specified in its funding award, estimated in its bid or current PAP, the project will run the risk of an overestimation penalty.⁶ The Commission will determine, based upon the generation information submitted, whether a project may be at risk for a penalty for overestimation, and notify the project proponent. Projects that are generating less than expected may avoid the overestimation penalty by requesting a reduction in the project's funding award to reflect the lower generation. request a change in their PAP. Such a request must be in writing, submitted to the Commission in a timely manner, and clearly should describe the following: 1) the project's generation as realized to date and expected over the remaining period of the funding award, 2) the circumstances that resulted in of the lower than expected generation, and 3) explain clearly why the shortfall in generation was unanticipated and beyond the project developer's reasonable control. If the Commission determines that the shortfall in generation was unanticipated and beyond

⁵ A project cannot be changed prior to coming on-line in a manner that makes it easier to meet an on-line deadline and subsequently be changed again after coming on-line to return the project back to its prior status. For example, a wind project cannot be changed so that 15 percent fewer turbines are to be installed, come on-line with this reduced project, and subsequently be changed to re-associate the turbines in question with the project.

⁶ If the actual generation from a winning project averages less than 85 percent of the estimated generation over the first three years of operation, the cents/kWh incentive payments to the project will be reduced by 25 percent for the remaining two years of payments. In addition, the total project award will be reduced to reflect the observed actual annual generation (as observed over the first three years) and the reduced incentive payments for the last two years. Funds removed from a project award will be held for potential reallocation per the Report.

the project developer's reasonable control, the project's funding award will be reduced to reflect the project's expected generation over the remaining period of the funding award, but will not be assessed a 25 percent penalty. not accounted for in the original bid for the project and in subsequent milestones during project construction.

In addition, projects may avoid the overestimation penalty by requesting a modification to increase the project's generating capacity. This request must be in writing, submitted to the Commission in a timely manner, and clearly describe the following: 1) the project's generation as realized to date and expected over the remaining period of the funding award, 2) the circumstances that resulted in the lower than expected generation, 3) why the shortfall in generation was unanticipated and beyond the project developer's reasonable control, 4) the proposed project modifications that are intended to increase the project's generating capacity, and 5) the increased generation expected from said modifications. If the Commission determines that the shortfall in generation was unanticipated and beyond the project developer's bidder's reasonable control, and the modified project remains otherwise eligible for funding, the funding award will be reduced as needed to reflect the modified project's expected generation over the remaining period of the funding award, but will not be assessed a 25 percent penalty. If the expected generation for the modified project equals or exceeds the level specified in the project's funding award, the total amount of the funding award will remain unchanged. Under no circumstances will the total amount of a project's funding award be increased due to a project's modification.